

REMARKS/ARGUMENTS

The present Amendment is in response to the Official Action mailed August 25, 2006. A Petition for a Two-Month Extension of the term for a response to said Official Action, up to and including January 25, 2007 is transmitted herewith. As an initial matter, Applicant would like to thank the Examiner for conducting several telephone discussions regarding the present matter, as well as for conducting an in person discussion on December 18, 2006.

In the present Amendment, claim 1 has been amended, claims 25-26 have been canceled and claims 27-29 have been added. The Applicant has added claims 27-28 depending from amended claim 1. Support for the recitation of "wherein the berm-like structure is attached to the flexible casing" of claim 27 and the recitation of "wherein the berm-like structure is repositioned on, in, or around the flexible casing" of claim 28 is clearly disclosed in paragraph [0064] of the specification which states, "The flexible casing 10 may include a berm-like structure 14 that may be attached to or repositioned on, in or around flexible casing 10." Thus, claims 1, 7-9, 13-24, and 27-29 are pending in the present application.

In the Official Action, the Examiner rejected claim 1 under 35 U.S.C. § 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. § 103(a), as obvious over Applicant's U.S. Pat. No. 5,829,191 ("the '191 patent"). Applicant contends that the '191 patent does not include the claim limitations of amended claim 1. Nowhere in the specification does the '191 patent teach providing a berm-like structure around a hole in the earth which is separate from a flexible casing and does not extend to the bottom of the flexible casing, wherein the berm-like structure is a ring. Further, the amendments to claim 1 are clearly supported in the specification, for instance, in the non-limiting example as disclosed in paragraph [0060] of the specification which states,

"as shown in FIG. 5, the flexible casing 10 may contain a berm-like structure 14 or any other suitable structure to maintain a berm around the planted tree to prevent water from entering the system." In addition, FIGS. 3-8 clearly show the use of a ring as a non-limiting example of a berm-like structure 14 around a hole in the earth which is separate from a flexible casing 10 and does not extend to the bottom of the flexible casing 10.

On page 6 of the Official Action, the Examiner asserted that U.S. Patent No. 4,457,102 to Ploeger ("Ploeger") teaches a structure readable on 'providing a berm-like structure' 30 and 'a flexible casing that includes a berm-like structure attached to the casing' (flared segment of liner 22). As discussed in the Interviews with the Examiner, Ploeger does not teach a berm or suggest providing a ring around a hole in the earth which is separate from a flexible casing and does not extend to the bottom of the flexible casing. As to the Examiner's assertion that Ploeger's structure 30 can act as a berm-like structure, Ploeger plainly teaches instead that this structure is a filter, which is porous to water but impervious to pests. Moreover, while the Examiner asserts that liner 22 may also read on a berm-like structure, liner 22 must also be used as the flexible casing in Ploeger, and therefore cannot be separate from the flexible casing and also used as a ring. Further, even if Examiner were to assert that tube 20 provides support for a berm-like structure, tube 20 extends to the bottom of liner 22. Further still, while the Examiner may contend that poles 12 are separate from liner 22, poles 12 are not structured around a hole in the earth as recited in amended claim 1. Thus, such claim should be moved into condition for allowance.

Applicant would like to thank the Examiner for the indication of allowable subject matter in the Action. Specifically, Examiner has indicated that claim 6 is objected to as being based upon a rejected base claim, but would be allowable if rewritten in independent form including all of the

limitations of the base claim and any intervening claims. The Applicant has added new claim 29 to include all of the limitations of claim 6 and previously presented claim 1. With the addition of the limitations of claim 6 into base claim 1, Applicant respectfully requests allowance of new claim 29.

In the Official Action, the Examiner objected to claims 1, 6 and 26. Claims 6 and 26 have been canceled herein and therefore the current objection to these claims is rendered moot. With regard to claim 1, the Examiner indicated that the recitation of "the self sealing material" lacks antecedent basis. In response, Applicant has amended claim 1 to include the recitation of "the self-sealing casing" as advised by the Examiner. Because this limitation has proper antecedent basis, Applicant therefore believes the objection to claim 1 should be withdrawn.

In view of the above, amended independent claim 1, dependent claims 7-9, 13-24, and 27-28 depending therefrom, and newly presented independent claim 29 are believed to be in immediate condition for allowance. Although only independent claims 1 and 29 have been specifically discussed throughout, it is noted that the remaining claims properly depend upon claim 1 or an intervening claim. As such, these claims are necessarily also allowable. A dependent claim is narrower than an independent claim from which it properly depends. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejections of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicant's agent at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: January 25, 2007

Respectfully submitted,

By 
William A. Di Bianca
Registration No.: 58,653
LERNER, DAVID, LITTENBERG,
KRUMLERZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Agent for Applicant

723995_1.DOC